

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC., and
AMAZON.COM, INC.,

Defendants.

No. 2:21-cv-00270-BJR

DECLARATION OF AMBIKA K.
DORAN IN SUPPORT OF
MOTION FOR LEAVE TO
AMEND NOTICE OF REMOVAL

I, Ambika Kumar Doran, declare:

1. I am a partner in the law firm Davis Wright Tremaine LLP, counsel for Defendants Amazon Web Services, Inc. and Amazon.com, Inc. I make this declaration from personal knowledge.

2. On April 30, 2021, Parler served on Defendants a Motion for Rule 11 Sanctions. The Motion claims that “the allegation that Parler is solely a citizen of Nevada because that is its principal place of business” is “legally and factually false,” and that Defendants have “refused to correct” this error despite “opportunities to withdraw [their] flawed Notice of Removal and stipulate to a remand of this action to state court.”

3. On May 18, 2021, my co-counsel, Alonzo Wickers, and I left a voicemail for Parler’s counsel, Angelo Calfo, informing Mr. Calfo that Defendants intended to seek leave to amend their notice of removal and asking for times to meet and confer.

DECLARATION OF AMBIKA K. DORAN IN SUPPORT OF MOTION
FOR LEAVE TO AMEND NOTICE OF REMOVAL - 1
(2:21-cv-00270-BJR)

Davis Wright Tremaine LLP
LAW OFFICES
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax

Executed this 21st day of May, 2021, at Mercer Island, Washington

Davis Wright Tremaine LLP
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920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
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CERTIFICATE OF SERVICE

I hereby certify that counsel of record have been served a true and correct copy of the foregoing *Declaration of Ambika K. Doran* by electronic mail through the Court's ECF Notifications to the following:

Angelo J. Calfo, WSBA# 27079
CALFO EAKES LLP
1301 Second Avenue, Suite 2800
Seattle, WA 98101
Email: angeloc@calfoeakes.com

David J. Groesbeck, WSBA No. 24749
DAVID J. GROESBECK, P.S.
1333 E. Johns Prairie Rd.
Shelton, WA 98584
Email: david@groesbecklaw.com

DATED this 21st day of May, 2021.

Davis Wright Tremaine LLP
Attorney for Defendants

By s/Ambika K. Doran
Ambika Kumar Doran, WSBA #38237

EXHIBIT 1

From: Angelo Calfo <angeloc@calfoeakes.com>
Sent: Friday, May 21, 2021 4:59 PM
To: Kumar, Ambika
Cc: Wickers, Alonzo; Stark, Michelle
Subject: RE: Parler - meet & confer

Ambika,

We reviewed your emails below relating to Amazon's intent to move to amend its removal notice. We believe that Amazon's actions in doing so will only exacerbate the Rule 11 violations that have been committed to date. The appropriate course of action here is for Amazon to stipulate to a remand to state court due to the false allegation in its original removal papers that there was complete diversity of the parties. That allegation was made without a reasonable basis and without any factual or legal investigation into its accuracy. You have conceded as much in prior correspondence. Amazon's tardy proposal to withdraw the false allegation only bolsters our Rule 11 motion.

Some points we urge you to consider before proceeding:

- You have provided no authority for the notion that a party can leverage its way into federal court by falsely alleging the existence of complete diversity and then (1) ask for discovery to develop a different theory to support removal; and (2) at the same time, claim that it has sufficient information to allege diversity on information and belief. We seriously doubt any court would countenance this conduct.
- Under certain circumstances, the law may permit a party to amend its removal notice to allege other grounds for federal jurisdiction, but *only* within the timeframe in which the removing party was originally permitted to seek removal. Here, of course, that time frame has indisputably passed. There is no authority for amending a removal notice to plead a substantively different basis for jurisdiction after the time permitted for seeking removal.
- The allegation you purport to make on "information and belief" is as unfounded as the allegation in your original removal notice that Parler is a citizen of Nevada. Parler's corporate disclosure statement shows that the JP Morgan Trust Company of Delaware is a trustee of a trust that is a member of NDM Ascendant LLC, which is a member of Parler. You have no basis to allege, on information or belief or otherwise, that the Rebekah Mercer 2020 Irrevocable Trust is anything other than a traditional trust and the allegation you propose below to the contrary is nothing other than speculation that lacks any basis. You could have investigated this issue prior to removing the case on a snap removal theory but you chose not to do so.
- While the *Carolina Casualty* case you cite suggests that a plaintiff may allege diversity based on "information and belief," it does not stand for the proposition that a defendant may remove a case based on "information and belief." See *Washington v. Mercedes-Benz USA, LLC*, No. CV 20-03133-CJC(KSX), 2020 WL 2991537, at *2 (C.D. Cal. June 3, 2020) ("alleging diversity of citizenship upon 'information and belief' cannot support removal"). This is particularly true where, as here, you have evidence of Parler's Delaware citizenship as set forth in Parler's corporate disclosure statement.
- Local Rule 101(f) requires Amazon to identify the citizenship of all of Parler's members. The allegation you propose to make "on information and belief" does not do that but rather dodges the issue by claiming Parler is not a citizen of Delaware, an allegation we have told you is incorrect and contrary to Parler's corporate disclosure statement. We also refer you to the local district court cases cited in our Rule 11 motion at pages 7-8.

We urge you not to proceed down this frivolous path. If you proceed, we do not believe Amazon is eligible for safe harbor, and, based on what you've informed us of to date, we intend to proceed with our Rule 11 filing.

Because you waited nearly three weeks before contacting us regarding the Rule 11 motion, we have had to turn our attention to this issue at the last minute. As I mentioned to you, I'm out of town today and am now about to get on a plane. We urge you, based on the above and all of our correspondence and submissions to date, not to exacerbate your Rule 11 violations by proceeding in the manner proposed. If you choose to do so, please explain why in light of our above analysis.

Angelo

From: Kumar, Ambika <AmbikaKumar@dwt.com>
Sent: Friday, May 21, 2021 9:26 AM
To: Angelo Calfo <angeloc@calfoeakes.com>
Cc: Wickers, Alonzo <alonzowickers@dwt.com>; Stark, Michelle <MichelleStark@dwt.com>
Subject: RE: Parler - meet & confer

Thanks, Angelo. We totally understand that you need some time to look this over. Still, given that the Rule 11 safe harbor expires after today, and that we contacted you Tuesday, we intend to file today—unless you agree to extend that safe harbor. We can be available to meet and confer later in the day if needed.

We intend to withdraw the allegation that Parler is a citizen of Nevada. We intend to replace it with the following:

“On information and belief, Parler is neither a citizen of Delaware nor Washington.”

We will make the related change of removing the cases on jurisdiction for a corporation.

Please let us know what times work.

Regards,
Ambika

Ambika Kumar | Davis Wright Tremaine LLP
Partner | Co-Chair, Media Law Practice
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Email: ambikakumar@dwt.com | Bio: <https://www.dwt.com/people/k/kumar-ambika>

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From: Angelo Calfo <angeloc@calfoeakes.com>
Sent: Friday, May 21, 2021 8:05 AM
To: Kumar, Ambika <AmbikaKumar@dwt.com>
Cc: Wickers, Alonzo <alonzowickers@dwt.com>; Stark, Michelle <MichelleStark@dwt.com>
Subject: RE: Parler - meet & confer

Thanks, Ambika. I understand you must have had other things to attend to, but because your response did not come until late last night we need the morning to review your positions and the case you cite. I'll be in touch about a further conference, which we believe is necessary before you file your request to amend your removal notice. In the interim, if you have finalized your draft allegation purporting to show diversity, please send it on as soon as you can. What you propose as an allegation of diversity is insufficiently specific for us to evaluate it for purposes of meeting and conferring on the issue.

From: Kumar, Ambika <AmbikaKumar@dwt.com>
Sent: Thursday, May 20, 2021 9:54 PM
To: Angelo Calfo <angeloc@calfoeakes.com>

Cc: Wickers, Alonzo <alonzowickers@dwt.com>; Stark, Michelle <MichelleStark@dwt.com>

Subject: RE: Parler - meet & confer

Angelo,

Thanks for your response. Here are answers to your questions:

1. We propose to amend the notice to allege on information and belief that Parler LLC is not a citizen of Delaware or Washington. We will withdraw the allegation that Parler is a citizen of Nevada. We are still finalizing the language.
2. The information to determine diversity is within Parler's possession. Under binding Ninth Circuit precedent, a party may allege diversity upon information and belief where the information needed is not publicly available. *See Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082 (9th Cir. 2014).
3. I'm not sure why this is relevant to whether you will agree, but we believe your continuing objection to our notice of removal is unwarranted. We have already outlined our position in response to the motion to remand, and this amended notice would conform to that position. We plan to make this motion in an abundance of caution.

I am not available at 9. Are there other times that would work for you? I'm free at 9:30 or 11, as is Al.

Regards,

Ambika

Ambika Kumar | Davis Wright Tremaine LLP

Partner | Co-Chair, Media Law Practice

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From: Angelo Calfo <angeloc@calfoeakes.com>

Sent: Thursday, May 20, 2021 10:34 AM

To: Kumar, Ambika <AmbikaKumar@dwt.com>

Cc: Stark, Michelle <MichelleStark@dwt.com>; Wickers, Alonzo <alonzowickers@dwt.com>

Subject: RE: Parler - meet & confer

Hi Ambika,

Thanks to you and Alonzo for leaving your voice mail late on Tuesday. I was not able to return the call yesterday as I am currently out of the office. Judge Rothstein's chamber procedures provide that the parties have a minimum of three days to have the opportunity to meet and confer. That time frame is especially important here, as the issue you are raising has been the subject of numerous communications between the parties and is, as a result, complex. I am interested in working through Amazon's sudden decision to amend its removal notice to determine how we will respond at your proposed meet and confer conference. But I need information to prepare. Specifically, please provide the following information:

- How precisely does Amazon propose to amend its removal notice? Would you agree to provide us a copy of the amended removal notice in the form you intend to file it prior to our meet and confer?
- Is Amazon continuing to maintain there is complete diversity of the parties in its amended removal notice? How will Amazon satisfy its burden of showing that complete diversity exists?
- Why is Amazon proposing to amend its notice at this time rather than when we first notified it of the deficiencies in its removal notice months ago?

We foresee the specter of additional Rule 11 violations with your proposed amended notice so we want to understand Amazon's new approach as clearly as possible before it proceeds with filing.

Could you provide a response to the above questions by close of business today? I'm available tomorrow morning at 9 am PT to confer following receipt of the requested information.

Best regards,

Angelo

From: Kumar, Ambika <AmbikaKumar@dwt.com>

Sent: Wednesday, May 19, 2021 10:23 PM

To: Angelo Calfo <angeloc@calfoeakes.com>

Cc: Stark, Michelle <MichelleStark@dwt.com>; Wickers, Alonzo <alonzowickers@dwt.com>

Subject: Parler - meet & confer

Angelo,

As you know, we are required to meet and confer concerning any motion before filing it, under Judge Rothstein's rules. Pursuant to those rules, Al and I left a voice mail for you yesterday indicating we intended to move to amend our notice of removal. Neither of us has received a phone call back.

Please let us know times that work for you Thursday and Friday morning. We intend to file our motion by end of day Friday.

Regards,

Ambika

Ambika Kumar | Davis Wright Tremaine LLP

Partner | Co-Chair, Media Law Practice

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